

SESSION OF 2022

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2607

As Amended by Senate Committee of the Whole

Brief*

HB 2607, as amended, would amend time limitations for habeas corpus motions under KSA 60-1507 and would amend the Kansas Sexually Violent Predator Act (SVPA) regarding the notice of release or anticipated release of sexually violent predators (SVPs).

Time Limitations for Habeas Corpus Motions

Under continuing law, such motions must be filed within one year of:

- The final order of the last Kansas appellate court to exercise jurisdiction on a direct appeal or the termination of such appellate jurisdiction; or
- The denial of a petition for writ of *certiorari* to the U.S. Supreme Court or issuance of such court's final order following granting such petition.

The bill would add that such motions would have to be filed within one year of the decision of the district court denying a prior motion under the section, the opinion of the last appellate court in this state to exercise jurisdiction on such prior motion, or the denial of the petition for review on such prior motion, whichever is later.

The bill would provide that this amendment would not bar actions under this section that are brought within one year of the bill's effective date.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Notice of Release or Anticipated Release of Sexually Violent Predators

Under current law, when it appears a person meets the criteria to be determined a SVP, the agency with jurisdiction is required to give written notice to the Attorney General and a multidisciplinary team (as defined in the statute) 90 days prior to the release or anticipated release of such person. The bill would require that on and after July 1, 2023, and prior to July 1, 2024, such notice be given 90 days to 2 years prior to such release or anticipated release. On and after July 1, 2024, the bill would require notice to be given two years prior to such release or anticipated release.

The bill would add the following non-exclusive list of situations in which such notice must be given:

- Anticipated release from total confinement of a person convicted of a sexually violent offense, except as soon as practicable following readmission to prison of a person returned for less than 90 days for revocation of postrelease supervision;
- Release of a person charged with a sexually violent offense who has been determined to be incompetent to stand trial;
- Release of a person who has been found not guilty of a sexually violent offense by reason of mental disease or defect; or
- Release of a person who has been found not guilty of a sexually violent offense by reason of mental disease or defect, and the jury answers in the affirmative to a special question regarding criminal intent.

Detention and Secure Confinement of SVPs

The bill would amend a statute governing the process for a court to determine probable cause that a person is a SVP to provide an exception to the current rule that, upon a probable cause finding, the court must direct that the person be taken into custody and detained in county jail until such time a determination is made on whether the person is subject to confinement under the SVPA. The bill would provide this transport and detention to county jail would not occur when the person is subject to secure confinement at a facility operated by the Secretary of Corrections until such confinement ends. In addition, the bill would add a provision to this section to allow the court to secure such confined person's attendance at the proceeding by directing the sheriff of the county where the proceeding will be held to take the person into physical custody and detain in county jail for such time reasonable to secure the person's attendance at the proceeding. The bill would specify that nothing in the statute creates rights regarding appearance at proceedings or the amount of time detained in county jail for the person alleged to be a SVP.

The bill also would change a notice requirement for the probable cause hearing to replace timing based upon when the person is taken into custody with timing based upon the filing of a petition under the SVPA, remove references to "detainer" or "detained," adjust the definition of "agency with jurisdiction" to reflect the other amendments made by the bill, and make clarifying amendments.

Background

As introduced, the bill contained provisions amending time limitations for *habeas corpus* motions. The Senate Committee of the Whole amended the bill to add the contents of SB 102, as amended by the House Committee on Judiciary, regarding notice of release or anticipated release of sexually violent predators.

HB 2607 (Time Limitations for Habeas Corpus Motions)

HB 2607 was introduced by the House Committee on Corrections and Juvenile Justice at the request of Representative Owens.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on February 10, 2022, a representative of the Office of Attorney General (OAG) provided **proponent** testimony, stating the bill would close an inadvertent loophole and remedy a lack of clarity regarding subsequent KSA 60-1507 motions claiming ineffective counsel by mirroring time calculations in the federal *habeas* process, and the bill would codify a recent Kansas Court of Appeals decision, *Rowell v. State*, 490 P.3d 78 (2021).

A representative of the Kansas Association of Criminal Defense Lawyers (KACDL) provided neutral testimony, stating the bill works as clarification of the statute of limitation that already exists and suggesting an amendment that any amendments to the section would not be applied retroactively to bar actions brought within one year of the bill's effective date.

No other testimony was provided.

On February 14, 2022, the House Committee amended the bill at the request of KACDL to extend the time limit for actions under the section to one year beyond the effective date of the bill; and, at the request of the Attorney General's Office, to change the effective date from publication in the statute book to publication in the *Kansas Register*.

Senate Committee on Judiciary

In the Senate Committee hearing on March 15, 2022, the same **proponent** described above provided testimony

and a representative of KACDL provided written-only neutral testimony. No other testimony was provided.

Senate Committee of the Whole

On March 23, 2022, the Senate Committee of the Whole amended the bill to change the effective date from publication in the *Kansas Register* to publication in the statute book, and also amended the bill to add the contents of SB 102, as amended by the House Committee on Judiciary, regarding notice of release or anticipated release of sexually violent predators.

SB 102 (Notice of Release or Anticipated Release of Sexually Violent Predators)

SB 102 was introduced by the Senate Committee on Judiciary at the request of the OAG.

Senate Committee on Judiciary

In the Senate Committee hearing on February 17, 2021, representatives of the OAG and the Kansas Sheriffs Association testified as **proponents** of the bill, stating the bill would reduce burdens on county jails by reducing the time possible SVPs spend in county jails during the commitment process and allowing the commitment process to begin earlier while the possible SVP remains in the custody of the Kansas Department of Corrections (KDOC).

A representative of KDOC provided neutral testimony with information on the current process and the additional resources KDOC would need under the provisions of the bill.

A representative of the KACDL provided written-only opponent testimony, stating concerns regarding hearing rights, the amount of time a person may be detained under the bill, and funding. No other testimony was provided.

House Committee on Judiciary

In the House Committee hearing on March 16, 2021, the same **proponents** described above provided testimony; the same representative of KDOC provided neutral testimony; and the same representative of KACDL provided written-only opponent testimony. No other testimony was provided.

On February 15, 2022, the House Committee amended the bill to update statutory references and to extend by one year the effective dates for the amended notification provisions included in the bill.

Fiscal Information

HB 2607 (Time Limitations for Habeas Corpus Motions)

According to the fiscal note prepared by the Division of the Budget on HB 2607, as introduced, the Office of Judicial Administration (OJA) indicates enactment of the bill could have a fiscal effect on Judicial Branch operations because the bill's provisions would add another time limit on how long a criminal defendant has to file a *habeas* action, and because of that additional time limit, it is possible that fewer criminal cases would be filed. However, a fiscal effect could not be estimated. Any fiscal effect associated with the bill is not reflected in *The FY 2023 Governor's Budget Report*.

SB 102 (Notice of Release or Anticipated Release of Sexually Violent Predators)

According to the fiscal note dated February 5, 2021, prepared by the Division of the Budget on SB 102, as introduced, KDOC indicates enactment of the bill would require additional resources because of the new timeframe for processing SVPs. KDOC states that it would require \$1,132,216 in FY 2022 from the State General Fund to review additional cases in which the SVPA may apply and to provide

additional sex offender treatment. Of that amount, \$229,216 would be for two contract clinical services report writers, \$75,000 would be for 1.0 administrative FTE position, \$660,000 would be for 8.0 program/treatment provider FTE positions, \$93,000 would be for 1.0 program/treatment supervisor FTE position, and \$75,000 would be for travel and equipment for the additional positions.

The OJA states enactment of the bill could require a judge to enter more orders in a sexually violent predator case. The additional expenditures cannot be estimated but are anticipated to be negligible.

The OAG could incur some additional costs during the transition of reporting periods because it would receive an increase in the number of notices from KDOC. OAG could also have an increase in cases to litigate to determine SVP status. However, a precise fiscal effect cannot be estimated because the number of additional cases is unknown.

The Kansas Association of Counties states that, because the county sheriff with jurisdiction would be responsible for transporting, housing, and monitoring the sexually violent predators, the bill could increase expenditures. However, it is not possible to estimate the fiscal effect. The League of Kansas Municipalities states enactment of the bill would have a negligible effect on cities that could be absorbed within existing budgets.

Habeas corpus; KSA 60-1507 motions; one year time limitation; Sexually Violent Predator Treatment Program; sexually violent predators; notice of release or anticipated release; Attorney General; multidisciplinary team; Kansas Department of Corrections